IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7173 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ZAKIR V DERIA - Petitioner(s)

Versus

EXECUTIVE ENGINEER & 1 - Respondent(s)

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Appearance :

MR EE SAIYED for Petitioner(s) : 1,
MR ND NANAVATI for Respondent(s) : 1 - 2.
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/05/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has prayed for quashing and setting aside of an order dated 6-7-1995 as at Annexure-G passed by the respondent no.2. By the said order, benefits given to the petitioner of Government Resolution dated 17-10-1988 for grant of pay scale etc. came to be withdrawn. It is recorded in the

said order that the benefits were given irregularly which was objected to by the Audit department.

2.The petitioner approached this Court challenging the said order dated 6-7-1995. In the present petition, the petitioner produced at Annexure-F, a list of persons who were granted the benefits of Government Resolution dated 17-10-1988. The same included the name of the petitioner as well. It was on this basis that petitioner contended before this Court that his name is shown in the list of persons who were granted said benefits.

3.The respondents in response to the notice issued by this Court appeared and filed an affidavit in reply dated 01-09-1995. In paragraph-4 thereof following averments were made :

> “(4) At the outset I say and submit that the petitioner has annexed a Documents at Ann.F. In my respectful submission, these documents are forged documents and petitioner has made some interpolation in the original documents. It is submitted that Annexure F is a list of daily wagers temporary employees,in which at Sr. No. 12, the the name of the petitioner is shown. But in the original documents at Sr. No.12, the name of A.V. DERIA is shown. But petitioner has made interpolation in the original documents and changed A.V.Deria to J.V.Deria and thereby tried to misled the Court and obtain stay. It is submitted that from these facts it is very clear that petitioner is not entitled to be absorbed in a

cadre of permanent employee and the reason is that the petitioner made interpolation in the very important documents. The original document is annexed hereto and marked as Annexure-II to this affidavit in reply. Thus, the petitioner has intentionally produced the forged documents and hence on th is count this petition is required to be rejected. It is pertinent to point out there that before Industrial Tribunal, the present petitioner has produced the original document and because of that reason the petitioner could not established his rights and his complaint was rejected by the Industrial Tribunal. So, the petitioner was conscious about the originality of the document and he has consciously made interpolation in the document with a malafide intention to mislead the Court. “

4. The petitioner has filed rejoinder. He has however, not made out a case that his name actually appears in the list produced at Annexure-F to the petition. His defence only is that typist by mistake on the basis of xerox copy of list supplied by the petitioner mistakenly typed his initials instead of that of his brother one Shri A.V. Deria.

5. The explanation rendered by the petitioner cannot be accepted. I have reason to accept the stand of the respondents that petitioner produced a document which was not entirely genuine. The name of the petitioner was never included in the list of persons to be granted benefits of Government Resolution dated 17-10-1988. The petitioner thus tried to rely on a document which was not genuine. His petition therefore, must be rejected

without any further consideration. Despite efforts from learned advocate Shri Saiyed, therefore, I have not permitted him to raise contentions on merits.

6. One small issue however survives. The petitioner was granted benefits of Circular dated 17-10-1988 by the respondents. Even if the same was under mistake, it would not be equitable to permit the respondents to recover a relatively large sum of Rs. 15,000/- from the petitioner who received a meagre salary of Rs. 750/- per month.

7. In the result, though the main prayer of the petitioner seeking quashing of impugned order is rejected, the respondents are prevented from seeking to recover the overpayment made to the petitioner pursuant to the impugned order and pursuant to the interim order granted by this Court.

8. Subject to above limited relief being granted to the petitioner, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)